

134-12/MFM  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the

**IN ADMIRALTY**

Complaint of Plaintiffs, McALLISTER  
TOWING & TRANSPORTATION CO., INC. as  
Owner and McALLISTER TOWING OF NEW  
YORK, LLC, as Owner Pro Hac Vice of the Tug  
PATRICE McALLISTER for Exoneration  
from/or Limitation of Liability

**PETITIONERS/PLAINTIFFS'  
RESPONSE TO CATERPILLAR  
INC.'S CLAIM DATED 7/2/2012**

**12 Civil 2505 (LAK)**

-----x  
McALLISTER TOWING & TRANSPORTATION CO., Inc. as Owner and  
McALLISTER TOWING OF NEW YORK, LLC, as Owner Pro Hac Vice of the Tug PATRICE  
McALLISTER (hereinafter referred to as "McALLISTER") by their attorneys, Freehill, Hogan  
& Maher LLP, responds to Caterpillar Inc.'s Claim dated July 2, 2012 upon information and  
belief as follows:

FIRST: McALLISTER admits the allegations contained in paragraphs numbered "1,"  
"3," "5," "6," "10" and "11" of Caterpillar Inc.'s Claim.

SECOND: McALLISTER denies any knowledge or information to form a belief as to  
each and every allegation contained in paragraphs numbered "2" and "7" of Caterpillar Inc.'s  
Claim.

THIRD: McALLISTER denies each and every allegation contained in paragraphs  
numbered "8," "13" and "17" of Caterpillar Inc.'s Claim and refers all questions of law to the

Court.

FOURTH: McALLISTER denies each and every allegation contained in paragraphs numbered "14," "15," "18" and "19" of Caterpillar Inc.'s Claim.

FIFTH: Answering paragraph numbered "4," "9," "12" and "16" of Caterpillar Inc.'s Claim, McALLISTER repeats and reiterates each and every answer and denial contained in paragraphs numbered "FIRST through FOURTH" inclusive of its Response to Caterpillar Inc.'s Claim with the same force and effect as though fully set forth at length herein.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

SIXTH: In the event that this Honorable Court lacks jurisdiction over Ohio Machinery Company d/b/a Ohio Cat then this action should be transferred to Ohio federal court pursuant to 28 U.S.C. 1404(a).

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

SEVENTH: The incident onboard the tug PATRICE McALLISTER, including any loss, damages and/or injuries to persons onboard the tug, were not the result of any negligence, fault or want of due care on the part of McALLISTER.

WHEREFORE, McALLISTER demands that Caterpillar's Inc.'s Claim dated July 2, 2012 be dismissed with costs and attorneys' fees to McALLISTER as against Caterpillar Inc.

and that the Court grant to MCALLISTER such other, further and different relief as the justice of the cause may require.

Dated: October 11, 2012

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By:

  
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